

LEGISLATIVE TESTIMONY 2011 ON HB 68

Lewis K. Smith, Powell County Attorney

As a small county prosecutor I have examined the Medical Marijuana issue from the standpoint of prosecution for diversion, and from the standpoint of local government Planning Boards for regulation and siting. They are both totally separate worlds and yet are sometimes closely related.

My focus on the diversion issue comes from the standpoint that it is not my job to prosecute people for doing what is legal, but rather for what is illegal. You are the people who draft the laws that I am obligated to enforce. Generally that is pretty clear cut and the decision making is black and white. However, every so often we get legislation which is not obvious on what we are to do. This citizen backed initiative has given us a considerable amount of grief. We have problems with some of the definitions or lack of definitions.

ONE SCENARIO – A medical marijuana caregiver is traveling through four counties to deliver product to two people who live in the farthest county. They are his only two patients who live in that county. The patients are also relatives of that Caregiver. The Caregiver is stopped for speeding in the second county. The Caregiver is transporting over five ounces of marijuana and the only card on him is his patient card, allowing him to possess one ounce of medical marijuana. By law he can possess one ounce himself and one ounce for each patient for whom he possesses a caregiver card. Is this a violation of the Medical Marijuana Act? I believe it is because I read the requirement that caregiver's possess the medical marijuana caregiver card as being on their person. I believe this is necessary to prevent diversion of the product. Why do you need to be carrying five ounces when you can only deliver two and keep one for yourself? Don't you know what kind of marijuana your ongoing patient needs? The Caregiver contends he has 23 caregiver cards back at his grow operation. Is that possession of the cards under the law? These are the kinds of questions County Attorneys and law enforcement have to answer on a regular basis under the existing law. Further, each of the County Attorneys is the decision maker in their county for pressing charges on each new scenario until we get court guidance on these issues. I, historically, have taken the position that possession means on your person when traveling with medical marijuana, specifically due to the diversion issue. Other County Attorneys interpret possession as constructive possession and say just send us proof you have that many cards someplace and we will then let you go. In the mean time, Law Enforcement, County Attorneys and the caregiver are tied up trying to decide whether or not you have the necessary cards and need to have them on you. The existing law needs a lot of tightening up to be fair and understandable for everyone.

I worked on the working group committee to present suggestions to the Interim Committee on what law enforcement, patients, and providers felt needed to be done to make the existing law more workable for all of us. Needless to say we didn't always agree on what should or should not be in the bill, but it was amazing on how much we could agree upon. Many of the people in the industry on the working group understood that without some regulation, record keeping and policing, their industry could simply be wiped out by a vote of the same people who put them in business in the first place. Law Enforcement at the Working Group recognized that at this time the people have spoken and stated that

they want to see some form of legal marijuana for the people who really need it. My own examination of the medical marijuana industry tells me that probably with scientific research and documentation beyond personal anecdotal testimonials, there probably is some medical use for marijuana beyond a trip to lala land. That being said it is not a miracle drug and many of the claims some people make border on snake oil salesmen.

So how do we clean it up? This bill is the start to the process. Does it do everything and cure all of the present and future ills of the business? No. But, it does provide law enforcement with better definitions, provides clearer penalties and a methodology for the State to regulate the industry, make inroads on illegal diversion and to tax the profits of the industry. I believe that you would be surprised by how much tax revenue even the legitimate side of marijuana would generate if you have a way of tracking it. Presently, record keeping in some businesses I have heard about is a joke.

I was recently told of a caregiver who has patients employed to sell the marijuana (he told me that was how he operated) and that when the money was collected it was dumped in a box behind the counter (told to me by a potential landlord who went to observe his operation). How is the Department of Revenue going to determine his tax liability? He told me he operates as a non-profit entity. He was contemplating putting in a video camera system to use as his point of sale system. Not all operators are set up like this, but you have nothing in the existing law to prevent this from happening. The law needs to have an answer to what is expected of marijuana providers in operating their "medical" business. Any other medical profession is required to comply with strict rules and requirements in dealing with dangerous drugs. Every other business dealing with medicine and dangerous drugs is required to have strict compliance with tracking and delivery to allow for detection of diversion. Every pharmacy has a point of sale system which will detail what, to whom and how much was sold in every transaction. HB 68 will require such recordkeeping and will help law enforcement reduce diversion.

There is talk in some quarters that this bill is dead in the water. I ask you what do you expect to do instead to replace what this Bill provides? If you are hanging your hat on placing the matter on the ballot for repeal in 2012, what do law enforcement and the industry do in the meantime? We will continue to harass people who are trying to be legitimate and will miss people who should be convicted due to confusion and uncertainty. This bill is the compilation of the work of a lot of people interested and heavily invested in this industry, both policing it and operating within it. Law Enforcement people that I deal with have repeatedly told me either repeal it or legalize it but don't leave us with this existing mess. I ask for your support for House Bill 68.